IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11426 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAJ MAHEL KARMACHARI

Versus

ANJUBEN SHARMA

Appearance:

MR JAYANT PATEL for Petitioner

Mrs. R.V. Acharya, Ld.GOVT PLEADER for Respondent No. 1

MS SUDHA R GANGWAR for Respondent No. 4

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 11/12/2000

ORAL JUDGEMENT

1. Heard learned counsel Mr. Jayant Patel appearing on behalf of the petitioner, Mrs. R.V. Acharya, learned

AGP for Respondents No. 1 to 3 and learned counsel Mrs. Sudha Gangwar for respondent No.4. Rule. Mrs. Acharya, learned AGP and Mrs. Sudha Gangwar, learned counsel appearing for respondent N.4 waives service of rule respectively.

2. The petitioner is running a canteen in Multi storey building in Amreli district, where government offices are located. The petitioner started the canteen initially on lease basis for the year 1999-2000. After the expiry of the period, petitioner applied for extending the term which was not granted by the authority, and therefore, petitioner filed a civil suit for extending the term of lease. However, no interim order was passed by the Civil Court and accordingly the allotment committee issued an advertisement calling for tender for running the canteen in the multi-storey building in Amreli district. The eligibility for submitting the offer by a tenderer is that, the tenderer must be a Cooperative Society of Government Employees. The petitioner is a Cooperative society of Government Employees. Apart from the petitioner, there were two other tenderers. Ultimately one tenderer withdrew its offer, and therefore the petitioner and respondent No.4 Cooperative Society remained in the fray as valid tenderers. The Allotment Committee having regard to the offer made by respondent No.4, accepted its tender and allowed to run the canteen for the year 2000-2001. The petitioner being aggrieved by the decision of the respondents Allotment Committee filed the present petition for quashing the contract given to respondent No.4 for running the canteen.

2. Mr. Jayant Patel, learned counsel appearing on behalf of the petitioner submitted that, respondent no.4 society has no experience in the matter of running a canteen. On the contrary respondent no.4 is a Banking Society and therefore they cannot run a canteen officially. It is also submitted by Mr. Patel that, unless provision is made in the Bye-Laws of the Cooperative Society for running a canteen, it is not permissible to carry on the business of running a canteen by a Society. It is also submitted by Mr. Patel that, respondent No.4 is a Banking Society and in the bye-laws there is no provision for running a canteen and therefore, the Allotment Committee has committed an illegality in accepting the tender of respondent No4. It is also submitted by Mr. Patel that, the petitioner did not quote any higher amount in view of the circular of the government dated 26-4-1974. It is submitted that, according to the Resolution of the Government, if a

Cooperative Society is permitted to run a canteen then in that event for leasing out the Government building the Cooperative Society shall be charged a token rent of Rs.1-00 per month, subject to certain conditions. It is therefore submitted that the petitioner Society did not quote any amount in the offer for running the canteen. It is however stated by the petitioner that the petitioner shall pay rent as per the Government Resolution. Mr. Patel accordingly submitted, that the authority has committed an error in accepting the tender of respondent No.4 who has quoted higher price for running the canteen. Mr. Patel further submitted that, according to the Resolution of the Government, there is no scope to offer any higher price towards rent as according to the Government Resolution, the authority cannot accept any higher rent than Rs.1-00 per month. It is also submitted by Mr. Patel that, the petitioner Society is a consumer society and in bye-laws of the Society provisions have been made for running canteen. Accordingly Mr. Patel submitted that, even though in the notice inviting tender it has not been specified that Cooperative society of Government Employees having experience in running canteen should only apply, but inspite of that any Cooperative Society who have no experience in running the canteen and have participated or offered any price, the authority should not have considered such Cooperative Society of Government Employees in running the canteen. Accordingly Mr. Patel submitted that, the Allotment Committee should have rejected the tender of respondent No.4 which is a Banking Cooperative Society and have no experience in running a canteen and even in the bye-laws of respondent No.4 there is no provision for running a canteen.

3. Learned counsel Mrs. Sudha Gangwar appearing for respondent No.4 submitted that, the respondent no.4 is running a Court canteen and therefore it cannot be said that respondent no.4 do not have any experience in the matter of running a canteen. Mrs. Gangwar on behalf of respondent No.4 further submitted that, according to the notice of tender, any Cooperative Society formed by Government employees are eligible to submit the tender. It has not been stated in the notice inviting tender that only those Cooperatives who have experience in running canteen should file the tender. Mrs. Gangwar accordingly submitted that, respondent No.4 fulfilled the requisite qualification as per notice inviting tender and no illegality has been committed by the authority in accepting the tender of the respondent No.4.

4. It appears from the notice inviting tender that

any Cooperative Society formed by Government employees can submit tender for running a canteen. No other condition or experience have been mentioned for submitting tender by any particular tenderer. On a perusal of the notice inviting tender, it is evident that, any Cooperative Society formed by Government employees are eligible for submitting the tender. Therefore, I am of the view that, respondent No.4 is eligible for submitting the tender as per the notice issued by the authority. Mrs. Acharya, learned AGP submitted that, since no experience have been sought in the notice inviting tender, all Cooperative Societies formed by Government Employees are eligible to submit tender for running the canteen. It is also submitted that the bye laws of the Society cannot restrict or confine the activity of any Cooperative Society. if any Cooperative Society wants to expand its business, then, in that event they may go for amending the bye laws to cover such new areas. There is sufficient force in the submissions of learned AGP. The Rule-5 of the Gujarat Cooperative Societies Rules, 1965, provides that, every registered Society shall frame their own bye laws. While making the bye laws certain methods have been enumerated in the Rules, which should be expressly provided in the bye laws of the Society. I do not find any restriction in expanding the area of operation by any Cooperative Society, as the area of operation can be expanded by amending the bye laws. In the present case no bye law of the respondent No.4 Society has been filed. Therefore it cannot be said that the bye laws of respondent no.4 do not provide for carrying on business in consumer goods or from running a canteen. Even if no such provision is there in the bye law of respondent No.4, I do not find any restriction for respondent No.4 Society to run the canteen because the condition under which the tender was called is that the Society must be formed by Government employees. It is not disputed that respondent No.4 Cooperative Society is not formed by Government employees. Therefore I am of the view that, according to the notice inviting tender, the respondent No.4 is eligible and no illegality has been committed in giving the offer to respondent No.4 for running a canteen in a multistorey building in Amreli district.

5. Having regard to the facts & circumstances stated above, and after considering the submissions made by learned counsel of all the parties, I am of the view that, there is no merit in the petition and accordingly it is dismissed. Rule discharged. Interim relief stands vacated. However, I make no order as to costs.

Dt: 11-12-2000 (P.K. Sarkar, J)

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